

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion, is respectfully requested.

After entry of the foregoing amendment, Claims 1, 3, 4, 6 and 7 remain pending in the present application. Claims 2 and 5 have been cancelled without prejudice or disclaimer, and their subject matter incorporated into the amended claims. Additionally, Claims 6 and 7 are amended to place these claims in a statutory format and to clarify that these claims do not invoke 35 U.S.C. §112, sixth paragraph. Support for additional amended features is found at least at Figures 17-19 of the application. No new matter has been added.

By way of summary the Official Action presents the following issues: Claims 6 and 7 stand rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter; Claims 1-4 and 6 stand rejected under 35 U.S.C. §102 as being unpatentable over Okose (JP 2000059731, hereinafter Okose); Claim 5 stands rejected under 35 U.S.C. §103 as being unpatentable over Okose in further view of Nakaya (U.S. Patent No. 7,130,532, hereinafter Nakaya); and Claim 7 stands rejected under 35 U.S.C. §103 as being unpatentable over Okose.¹

REJECTION UNDER 35 U.S.C. §101

In response to the rejection outlined at paragraph one of the Official Action, Applicant has amended claims 6 and 7 in accordance with MPEP guidelines. As such, Claims 6 and 7 now recited a statutory format.

Accordingly, Applicant respectfully requests that the rejection of Claims 6-7 under U.S.C. §101 be withdrawn.

¹ As Applicant has amended Claims 1 and 6 to incorporate features of cancelled Claim 5, Applicant respectfully submits that the rejection of record under 35 U.S.C. §102, which did not account for this claimed feature, has been rendered moot.

REJECTION UNDER 35 U.S.C. §103

The Official Action has rejected Claim 5 under 35 U.S.C. §103 as being unpatentable over Okose in view of Nakaya. The Official Action contends that the combination of these references discloses or suggests all of the Applicant's claimed features. Applicant respectfully traverses the rejection.²

Applicant's amended Claim 1 recites, *inter alia*, an information processing apparatus, including:

...conversion means for converting the first format of said content data acquired by said content data acquisition means to a second format, the second format being a predetermined optical disc standard;

information acquisition means for acquiring relative time information of said content data from said content data acquired by said content data acquisition means, said relative time information defining timing of portions of the content data;

generation means for generating a menu of said content data acquired by said content data acquisition means based on said relative time information and user specified time information;

recording control means for executing control such that said content data converted to said second format by said conversion means is recorded from said information processing apparatus to a predetermined removable recording medium in accordance with said menu generated by said generation means...

Okose describes a DVD offering system. Specifically, content of a DV format is converted to a MPEG stream. An edit control part (109) performs editing produced by an added information generating part (110). In this way, time code information embedded in the DV format data is utilized in the MPEG stream.

As noted in the Official Action at page 7, Okose does not describe generating menu information based upon acquired time information. In this regard, the Official Action cites the Nakaya reference.

² Although this rejection has only pertained to Claim 5 only, as this subject matter of this claim is now incorporated into independent Claims 1 and 6, Applicant will treat this rejection as if applied to all claims.

Nakaya describes a HDD device which records TV content. As shown in Figure 3 at step (S1) and (S7) menus are provided for operating the video recording/reproducing apparatus. Additionally, television program scheduling may be incorporated into the menu systems for navigating the selective recordings. However, Applicant's amended claims require that a menu is generated based upon relative time information of content data and user specified time information. Applicant's claimed relative time information defines timing of portions of the content data. In this way, the converted second format may be provided to a removable recording medium in accordance with the generated menu. The cited combination of references do not disclose or suggest these amended claim features.

Finally, with respect to Claim 7, it is noted that the art of record does not describe or suggest the features of Claim 7. With regard to this noted deficiency in light of the rejection under 35 U.S.C. § 103, it appears that the Official Action is taking official notice without providing a citation in support of its assertion.

If official notice is being taken, Applicant respectfully submits that official notice alone is not permissible as grounds for rejection in the outstanding Official Action. As stated in the MPEP at § 2144.03(A):

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-21.

With regard to the above, Applicant respectfully submits that the features advantageously recited in Claim 7 is not "capable of instant and unquestionable demonstration as being well-known."

Accordingly, Applicant respectfully requests that the Examiner provide a prior art reference describing these features as required by MPEP 2144.03.

Accordingly, Applicant respectfully requests the rejection of Claims 1, 3, 4, 6 and 7 under 35 U.S.C. §103 be withdrawn.

CONCLUSION

Consequently, in view of the foregoing amendment and remarks, Applicant respectfully submits that the present application is in condition for allowance, and such action is respectfully requested at an early date.

Respectfully submitted,

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